

To the Senators and Representatives of the Florida Legislature:

For the past 159 years, America has been grappling with the issue of civil rights. As a Nation, we have waged war over it, codified it in the 1866 Civil Rights Act, amended our Constitution in 1868, and reaffirmed it time and again in 1871, 1875, 1957, 1960, and 1964. Yet here we are, well into the 21st century, still addressing the issue of class-based discrimination. The injured parties may have changed, but the injury remains the same: due process and equal protection under the law.

Where once the government had to step in to protect a particular class of citizens from the oppressive actions of others, we now find ourselves in an era where corporate and special interests wield their influence to deny justice to the people. Laws enacted to protect the rights of the people have instead become tools of exclusion, shielding powerful industries from accountability. One such law, *Florida Statute §768.21(8)*, exemplifies how systemic injustice persists—not through an outright denial of the right to access the courts, but through the calculated erosion of legal recourse. The government owes a duty to the people to protect their rights, not to serve as a gatekeeper for those who would evade responsibility.

At its core, *FS §768.21(8)* accomplishes two things. First, it creates two distinct classes of citizens. The first class is the licensed medical professional and the hospital corporations, who are shielded from noneconomic damage awards when negligence occurs. The second class of citizens created by Subsection 8 are those adult citizens who have lost an unmarried adult child or parent due to medical negligence. The law strips this class of citizens of their right to seek a remedy through the civil courts. Though not directly denying their Constitutionally protected right to access the civil courts, it accomplishes the same end by denying them the ability to be awarded noneconomic damages.

This law stands as an abhorrent and glaring example of government-sanctioned discrimination, creating an underclass of victims whose suffering is dismissed not due to any lack of merit but simply because they do not fit within an arbitrary legal category. It is a law that tells grieving families that their loss is unworthy of remedy, that their loved one's life was legally expendable, and that the medical and insurance industries—protected by powerful lobbying interests—must be shielded from the consequences of their negligence.

The implications of this law go beyond the immediate families it affects. It *erodes public trust in the justice system*, conveying that some lives matter less than others under Florida law. It *weakens the deterrent function of civil liability*, allowing dangerous medical practices to persist without fear of consequence. It *places corporate profit over human life*, elevating the financial interests of insurers, doctors, and hospitals above the fundamental principle of *equal justice under the law*. Most disturbingly, it *allows the negligent healthcare worker to remain unchecked at the bedside*. The law *provides a false sense of righteousness for the negligent party*, confirming their belief that they have done nothing wrong because the State has provided them with a shield against accountability.

Subsection 8 is not just a legal flaw—it is a moral failing. A society that values justice cannot stand idly by while a segment of its people is denied access to the courts. The (S)tate of Florida has allowed this injustice to continue for over three decades despite overwhelming evidence of the harm it causes. Families who have lost their loved ones to medical negligence deserve their day in court, just as any other victim of wrongful death would receive. The (S)tate must not continue to act as an enabler of corporate immunity at the expense of the people's rights.

However, repealing *FS §768.21(8)* is not the final step; it is merely the first. Restoring these families' right to seek justice is only the beginning of addressing the more profound, systemic problem: the crisis of medical malpractice itself. Thousands of individuals lose their lives each year due to preventable errors, misdiagnoses, surgical mistakes, and systemic failures in patient care. Fixing the legal framework is necessary, but it does not resolve the broader crisis in medical accountability and patient safety.

As we move forward, it is imperative that we restore access to the courts and rethink how medical malpractice should be addressed. A purely adversarial system—where victims must rely on litigation alone—has failed both patients and providers. A *systems-based approach*, such as the Michigan Model, offers a more effective alternative. By prioritizing *transparency, accountability, and patient safety improvements*, we can build a model that compensates victims fairly and prevents future harm through systemic reforms.

The first step is justice. The next step is meaningful reform. The people of Florida deserve both.

Wilder's Law of Initial Value (LIV)

The connection between *Wilder's Law of Initial Value (LIV)* and the *Systems Error Approach/Michigan Model* in the fight against *FS §768.21(8)* follows the same logic:

Step 1: LIV and Systems-Level Change

- LIV tells us that the magnitude and direction of a response depend on the initial state of the system.
- If the system is already dysfunctional, even minor errors will have massive consequences.
- In politics and society, this means that a nation already polarized will overreact to even minor events.
- In healthcare and tort law, it means that a system already structured to protect hospitals and insurers over patients will not react proportionally to isolated malpractice cases—it will actively resist systemic change.

Step 2: LIV in Medical Malpractice Reform

- The *Systems Error Approach* and the *Michigan Model* aim to reduce systemic resistance to addressing malpractice by lowering the system's baseline defensiveness (hospitals, insurers, and doctors/nurses).
- At present, the baseline condition of medical professionals, hospitals, and insurers is high defensiveness, risk aversion, and institutional self-protection—which means that even legitimate malpractice claims are met with disproportionate resistance.
- Just as political polarization causes irrational responses to governance, institutional fear of liability causes irrational responses to malpractice reform.

Step 3: Application to FS §768.21(8)

- The exclusionary nature of *FS §768.21(8)* creates a *legalized negligence* loophole that increases hospital and insurer protectionism—they do not see malpractice as something to be fixed but as something to be covered up and defended against.

- The *Michigan Model*, based on NASA's *Systems Error Approach*, attempts to change the system's initial conditions so that hospitals react to medical errors with improvement rather than defensiveness.
- Instead of fighting every claim with maximum resistance, these models create a new baseline where malpractice is acknowledged and addressed proactively.
- This would lower the institutional resistance to change, making it possible to repeal FS §768.21(8) without the same level of political warfare we see now.

Step 4: Broader Implications

- If hospitals and insurers are willing to acknowledge malpractice without excessive defensiveness, then *FS §768.21(8)* loses its primary justification—there would be no need for broad immunity if errors were handled systematically rather than adversarially.
- Just as reducing polarization could help stabilize political reactions, reducing institutional fear of liability could help stabilize malpractice law.
- Currently, the initial condition of both systems (politics and malpractice liability) is maximal resistance to accountability—which is why even the best reform proposals are met with extreme pushback.

The lesson from LIV is that changing individual events is not enough; you must change the system's initial conditions before real reform can happen. In politics, this means reducing polarization before expecting cooperation. In medical malpractice reform, this means reducing institutional defensiveness before expecting a fair legal system.

This is why the work of each individual legislator is so important—it isn't just about fixing a bad law; it's about changing the initial conditions that make bad laws inevitable.

A Better Way to Handle Medical Malpractice: A System That Saves Lives and Lowers Costs

Every year, thousands of Americans suffer due to medical errors—mistakes that, in many cases, could have been prevented. Unfortunately, our current

system for handling medical malpractice does little to prevent these errors and instead focuses on assigning blame after the fact. Patients who are harmed face years of litigation, doctors practice defensive medicine out of fear of lawsuits, and the only real winners are the attorneys who profit from drawn-out legal battles. It's time for a new approach—one that prioritizes patient safety, transparency, and fair compensation over litigation and secrecy.

The good news? A proven alternative already exists. The *Michigan Model*, based on *NASA's aviation safety protocols*, has demonstrated that a *systems-based approach can reduce medical errors, increase accountability, lower costs, restore trust in the medical system, and fairly compensate victims' families, restoring their right to due process and equal protection under the law*. This approach treats medical malpractice not as an issue of individual blame but as a *failure of the healthcare system* that must be analyzed and improved. We must embrace this model nationwide if we genuinely want safer hospitals and better patient care.

The Problem with the Current System

The traditional medical malpractice system is reactive, adversarial, and ineffective. When a medical error occurs:

- Doctors and hospitals often *deny and conceal mistakes* for fear of lawsuits.
- Patients and families must *endure long and costly legal battles* to seek compensation.
- Hospitals fail to *learn from their mistakes* because the focus is on legal defense, not systemic improvement.
- The cost of malpractice insurance skyrockets, driving up healthcare costs for everyone.

Simply put, the current system does *nothing to prevent errors from happening again*. It treats medical malpractice as a legal problem rather than a patient safety crisis, as it truly is.

A Proven Solution: The Michigan Model

Michigan has taken a different approach—putting patient safety first while reducing lawsuits and healthcare costs. Here's how it works:

- **Early disclosure:** Doctors and hospitals acknowledge mistakes *immediately* rather than hiding them.
- **Fair and fast compensation:** Patients receive *reasonable compensation quickly*, without years of litigation.
- **Root cause analysis:** Instead of blaming individuals, healthcare providers *analyze system failures* to prevent future errors.
- **A culture of safety:** Encouraging doctors and nurses to *report mistakes without fear of punishment* leads to improved practices and fewer repeated errors.

The results? Fewer lawsuits, lower legal costs, and safer patient outcomes. In Michigan, *malpractice claims were cut in half* after implementing this system, and the time needed to resolve claims *dropped from 20 months to just 8 months*.

A National Call to Action

If this model works in Michigan, why isn't it being implemented nationwide? The answer is simple: **the legal and insurance industries profit from the status quo**. The longer a case drags on, the more money is made. Meanwhile, patients, doctors, and hospitals continue to suffer.

Alongside the clean repeal of *FS §768.21(8)*, we need legislation that mandates transparency, encourages error reporting, and prioritizes patient safety over litigation. A law such as this would establish:

- A confidential error reporting system to track and analyze medical mistakes.
- Mandatory root cause analysis to identify and fix systemic flaws.
- Early compensation for victims, reducing the need for expensive lawsuits.
- Legal safe harbors for doctors and hospitals that participate in safety reforms.

This is not just about reforming malpractice laws—it's about *saving lives, lowering healthcare costs, and restoring trust in the medical system*. Floridians deserve a healthcare system *prioritizing prevention over punishment and patient care over legal wrangling*.

The Time for Change is Now

We cannot afford to wait. Every day that passes under the current system means *more preventable deaths, more suffering, and more wasted resources*. We must embrace a systems-based approach to malpractice reform to create a truly just and effective medical system.

The *Michigan Model* has already proven that this works. Now, it's time to take it nationwide. Patients, doctors, and policymakers must come together to demand change. Let's stop the cycle of blame and start building a system that *actually protects patients, supports healthcare workers, and reduces unnecessary costs*.

The time for change is now. Will we continue down the same broken path, or will we finally fix the system that was meant to protect us?

Respectfully Submitted,

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